IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 2.3.2007

Shiv Singh and others **....Petitioners**

Vs.

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

Present:- Mr.Vipin Mahajan, Advocate for the petitioners.

Mr.M.C.Berry, Senior DAG Punjab.

RANJIT SINGH, J.

Petitioner No.1 is an Ex-serviceman having served Nation for 20 years. Petitioners No.2 and 3 are his sons, whereas petitioner No.4 is his wife. Petitioner No.5 is sister-in-law of petitioner No.1. They all are aggrieved against the FIR registered against them under Sections 406, 420 and 120-B IPC at Police Station City, Rajpura and are seeking quashing of the same. The impugned FIR was lodged by respondent No.2 Mela Singh, who is stated to be nephew of petitioner No.2. It is alleged that petitioners No.1 and 2 and others had approached one Ashwani Kumar, who claimed to be running an employment agency with good links in the foreign countries like U.S.A.,U.K., Dubai etc. and where he could arrange job. Ashwani Kumar made promise to petitioners No.1 and 2 and Jagmohan Singh son of respondent No.2 for arranging of visa and job for them in foreign country. Petitioner No.1 and Jagmohan Singh allegedly paid

a sum of Rs.4 lacs and Rs.2 lacs respectively to Ashwani Kumar along with their passports for procuring visa and job for them. Ashwani Kumar, however, played a fraud with the petitioners and Jagmohan Singh. He took them to Kathmandu and Bombay on the pretext of sending them to USA. The fraud was detected when he could not fulfill his promise. Prayer for refund of the money was made and when Ashwani Kumar has refused to refund the money, the relations between the petitioners and respondent No.2 became strained. Petitioner No.1 states to have complained to Deputy Commissioner of Police (South) New Delhi against Ashwani Kumar. He also filed a criminal complaint before Additional Chief Metropolitan Magistrate, New Delhi leading to registration of FIR No.578 of 2000 under Sections 420, 406 and 120-B IPC against Ashwani Kumar, Babbu and Chhotu (brothers-in-laws of Ashwani Kumar and Sanjay and Manoj). Respondent No.2, in these circumstances, felt aggrieved against the petitioners, who were his close relatives and ultimately filed a complaint before the police authorities against the petitioners with the allegation that the petitioners have taken Rs.6 lacs from him for sending his son abroad. This led to registration of the impugned FIR.

Relying upon the aforementioned facts, the petitioners have averred that in fact they have also been cheated and are victim of the circumstances. During the course of these proceedings, the compromise is effected between the petitioners and respondent No.2 on the intervention of elders and respectables of the family. A sum of Rs.4 lacs out of Rs.6 lacs allegedly given by respondent No.2 to the

petitioners was earlier refunded and balance Rs.2 lacs is also paid to respondent No.2. On his part, respondent No.2 has agreed to withdraw his complaint and not to press for further proceedings pursuant to the FIR registered at his instance. Copy of the affidavit of respondent No.2 is annexed as Annexure P2.

Respondent No.2 has filed rely. The factum of compromise is admitted by him. The perusal of his affidavit (Annexure P2) would disclose that respondent No.2 has compromised this case with the petitioners and he is not interested in pursuing the FIR lodged at his instance.

It may, however, require consideration if quashing of proceedings in a case registered under Sections 406, 420 and 120-B IPC can be allowed on the basis of compromise. Offences revealed from the FIR are non-compounding. Counsel for the petitioners has drawn my attention to Dharampal Bajaj & Ors. Vs. State of Punjab & Anr. 2006 (4) Criminal Court Cases 1004 whereby FIR under the same offences was ordered to be quashed on the basis of compromise. Counsel has also referred to Maninder Singh and another Versus Union Territory Chandigarh and others 2004 (4) RCR (Criminal) 420 to urge that such a course can be adopted even in cases where FIR is for non-compoundable offences and these can be quashed on the basis of compromise. Reference in this regard may also be made to the judgment of **Haji Nihal Ahmad and others Vs. State of U.P and another, 1998 Crl. L.J. 2082.** In this case, the question whether a proceeding in a criminal case arising out of non-compoundable offences can be quashed came up for

consideration. It was observed that even if the proceedings in such case are allowed to be tried by the Court, the ultimate result would be an acquittal as the complainant party was not likely to support the prosecution case. It was accordingly observed that trial in such a case would be an exercise in futility. It can be noticed that in a case where the parties have settled their differences and dispute though outside the Court, it would rather be unnecessary and unwarranted to continue with this trial which ultimately would be a fruitless exercise. In **S.M. Jayaram Vs. State of Karnataka, 1976 Crl. L.J. 217,** it was observed that after the parties had compromised among themselves, the Police had no business to file a charge sheet etc. and to further represent that the case being under Section 379 IPC for theft can only be compounded with the permission of the Court.

By now, it is fully settled that High Court in exercise of its inherent powers can quash proceedings if it finds that allowing of any such proceedings to continue would be an abuse of process of the Court or that ends of justice require that the proceedings be quashed. In this regard, observation of the Hon'ble Supreme Court in **State of Karnataka Vs. L.Muniswami AIR 1977 SC 1489** can be referred. It was observed in this case, that the ends of justice are higher than ends of mere law. It was further said that though justice has got to be administered accordingly to the laws made by the legislature yet the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. As per the Hon'ble Supreme Court, the lame prosecution could be quashed.

It can be noticed that in various judgments, the Hon'ble

Supreme Court and various High Courts have granted permission for compounding of offences in the non-compoundable offences. A Full Bench of this Court has gone into this aspect in detail in Dharambir Vs. State of Haryana, 2005 (3) RCR (Criminal) 426 and has held that criminal proceedings in prosecuting a case relating to matrimonial can be quashed in exercise of inherent jurisdiction under the provisions of Section 482 Cr.P.C. Though the Full Bench has ruled that High Court has no power to quash the proceedings or allow compounding of offences either under the Code of Criminal Procedure or the Constitution except in matrimonial cases, yet it went on to hold that High Court can quash criminal proceedings in the interest of justice and to prevent abuse of law. It was also observed that the terms `abuse of process of law' and `in the interest of justice' cannot be put in straight-jacket formula and Courts were left to decide as per the facts in each case. As per the said Full Bench, while exercising powers under Section 482 of the Code, the Court has, in given cases, quashed the criminal proceedings where it felt that the same were required to prevent the abuse of process of any Court or to otherwise secure ends of justice. The Full Bench further held that these decisions would necessarily involved an appraisal of the facts and circumstances of each case and Court could not, while interpreting the statutory provisions, take upon itself the onerous responsibility of extending the powers of compounding of offences to cases other than those listed in Section 320 (1) and (2) of the Code.

It is, thus, clear that the Hon'ble Full Bench clearly left it

to the discretion of the Judge to decide in each case to intervene under Section 482 Cr.P.C. depending upon the facts and circumstances of the case to see if quashing of the proceedings could be ordered in exercise of powers under Section 482 Cr.P.C. to secure the ends of justice and to avoid abuse of process of the Court. While interpreting the sweep of Section 482 Cr.P.C, the Hon'ble Supreme Court in **Madhu Limaye Vs. State of Maharashtra, AIR 1978 SC 47** had observed that there are only two exceptions for exercise of power under this Section and these are:-

> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redressing of the grievance of the aggrieved party;
>
> (2) That it should be exercised very sparingly to prevent abuse of any Court or otherwise to secure the ends of justice."

The facts in this case clearly show that the petitioners and respondent No.2 are closely related to each other. It can also be seen that they both were deceived by third party, namely, Ashwani Kumar. Even if there was some money paid by respondent No.2 to the petitioners, the same has been returned. The only relevant evidence that prosecution can rely upon in this case would that be of respondent No.2. In view of the compromise, he is not likely to support the prosecution. Allowing such a prosecution to continue would only result in wasting the time of the Court and would be an exercise in futility. No useful purpose is likely to serve in continuing the proceedings in the present case.

The present petition is allowed and FIR No.377 dated 2.11.2001 registered under Sections 406, 420 and 120-B IPC at Police Station City, Rajpura and all subsequent proceedings taken therefrom are quashed.

(Ranjit Singh)
Judge

2.3.2007
AS